

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 7245
OFFERED BY MS. GARCIA OF TEXAS

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “PCAOB Whistleblower
3 Protection Act of 2022”.

4 SEC. 2. WHISTLEBLOWER INCENTIVES AND PROTECTION.

5 The Sarbanes-Oxley Act of 2002 is amended—

6 (1) in section 105 (15 U.S.C. 7215) by adding
7 at the end the following:

8 “(f) WHISTLEBLOWER INCENTIVES AND PROTEC-
9 TION.—

10 “(1) DEFINITIONS.—In this subsection the fol-
11 lowing definitions shall apply:

12 “(A) COVERED PROCEEDING.—The term
13 ‘covered proceeding’ means any disciplinary
14 proceeding by the Board initiated after the date
15 of the enactment of this subsection that results
16 in monetary sanctions exceeding \$250,000.

17 “(B) ORIGINAL INFORMATION.—The term
18 ‘original information’ means information that—

1 “(i) is derived from the independent
2 knowledge or analysis of a whistleblower;

3 “(ii) is not known to the Board from
4 any other source, unless the whistleblower
5 is the original source of the information;
6 and

7 “(iii) is not exclusively derived from
8 an allegation made in a disciplinary pro-
9 ceeding, in a judicial or administrative
10 hearing, in a governmental report, hearing,
11 audit, or investigation, or from the news
12 media, unless the whistleblower is a source
13 of the information.

14 “(C) MONETARY SANCTIONS.—The term
15 ‘monetary sanctions’ means any civil money
16 penalties imposed by the Board under sub-
17 section (c)(4) as modified by the Commission
18 under section 107(c)(3).

19 “(D) WHISTLEBLOWER.—

20 “(i) IN GENERAL.—The term ‘whistle-
21 blower’ means any individual who provides,
22 or two or more individuals acting jointly
23 who provide, information relating to a vio-
24 lation of this Act, the rules of the Board,
25 the provisions of the securities laws relat-

1 ing to the preparation and issuance of
2 audit reports and the obligations and li-
3 abilities of accountants with respect there-
4 to, including the rules of the Board issued
5 pursuant to this Act, or professional stand-
6 ards.

7 “(ii) SPECIAL RULE.—Solely for the
8 purposes of paragraph (7), the term ‘whis-
9 tleblower’ shall also include any individual
10 who takes an action described in para-
11 graph 7(A), or two or more individuals act-
12 ing jointly who take an action described in
13 paragraph 7(A).

14 “(2) AWARDS.—

15 “(A) IN GENERAL.—In any covered dis-
16 ciplinary proceeding, the Board shall pay an
17 award or awards to one or more whistleblowers
18 who voluntarily provided original information to
19 the Board that resulted in the board imposing
20 monetary sanctions, in an aggregate amount
21 determined in the discretion of the Board but
22 equal to—

23 “(i) not less than 10 percent, in total,
24 of what has been collected of the monetary
25 sanctions imposed; and

1 “(ii) not more than 30 percent, in
2 total, of what has been collected of the
3 monetary sanctions.

4 “(B) PAYMENT OF AWARDS.—Any amount
5 paid under this subparagraph shall be paid
6 from any funds generated from the collection of
7 monetary sanctions.

8 “(3) DETERMINATION OF AMOUNT OF AWARD;
9 DENIAL OF AWARD.—

10 “(A) DETERMINATION OF AMOUNT OF
11 AWARD.—

12 “(i) DISCRETION.—The determination
13 of the amount of an award made under
14 paragraph (2) shall be in the discretion of
15 the Board.

16 “(ii) CRITERIA.—In determining the
17 amount of an award made under subpara-
18 graph (A), the Board shall take into con-
19 sideration—

20 “(I) the significance of the infor-
21 mation provided by the whistleblower
22 to the success of the disciplinary pro-
23 ceeding;

24 “(II) the degree of assistance
25 provided by the whistleblower and any

1 legal representative of the whistle-
2 blower in a disciplinary proceeding;
3 and

4 “(III) the programmatic interest
5 of the Board in deterring violations by
6 making awards to whistleblowers who
7 provide information that lead to suc-
8 cessful enforcement.

9 “(B) DENIAL OF AWARD.—No award
10 under subparagraph (A) shall be made—

11 “(i) to any whistleblower who is, or
12 was at the time the whistleblower acquired
13 the original information submitted to the
14 Board, a member, officer, or employee of—

15 “(I) an appropriate regulatory
16 agency (as such term is defined in
17 section 3 of the Securities Exchange
18 Act of 1934);

19 “(II) the Department of Justice;

20 “(III) a self-regulatory organiza-
21 tion (as such term is defined in sec-
22 tion 34 of the Securities Exchange
23 Act of 1934);

24 “(IV) the Public Company Ac-
25 counting Oversight Board; or

1 “(V) a law enforcement organiza-
2 tion;

3 “(ii) to any whistleblower who is con-
4 victed of a criminal violation related to the
5 Board finding for which the whistleblower
6 otherwise could receive an award under
7 this section;

8 “(iii) to any whistleblower who gains
9 the information through the performance
10 of an audit of financial statements re-
11 quired under the securities laws and for
12 whom such submission would be contrary
13 to the requirements of section 10A of the
14 Securities Exchange Act of 1934 (15
15 U.S.C. 78j-1); and

16 “(iv) to any whistleblower who fails to
17 submit information to the Board in such
18 form as the Board may, by rule, require.

19 “(4) REPRESENTATION.—

20 “(A) PERMITTED REPRESENTATION.—Any
21 whistleblower who makes a claim for an award
22 under paragraph (2) may be represented by
23 counsel.

24 “(B) REQUIRED REPRESENTATION.—

1 “(i) IN GENERAL.—Any whistleblower
2 who anonymously makes a claim for an
3 award under paragraph (2) shall be rep-
4 resented by counsel if the whistleblower
5 anonymously submits the information upon
6 which the claim is based.

7 “(ii) DISCLOSURE OF IDENTITY.—
8 Prior to the payment of an award, a whis-
9 tleblower shall disclose the identity of the
10 whistleblower and provide such other infor-
11 mation as the Board may require, directly
12 or through counsel, for the whistleblower.

13 “(5) NO CONTRACT NECESSARY.—No contract
14 with the Board is necessary for any whistleblower to
15 receive an award under paragraph (2), unless other-
16 wise required by the Board by rule.

17 “(6) APPEALS.—Any determination made under
18 this subsection, including whether, to whom, or in
19 what amount to make awards, shall be in the discre-
20 tion of the Board. Any such determination, except
21 the determination of the amount of an award if the
22 award was made in accordance with this paragraph,
23 may be appealed to the Commission not more than
24 30 days after the determination is issued by the
25 Board. The Commission shall review the determina-

1 tion made by the Board in accordance with section
2 107(c).

3 “(7) PROTECTION OF WHISTLEBLOWERS.—

4 “(A) PROHIBITION AGAINST RETALIA-
5 TION.—No employer may discharge, demote,
6 suspend, threaten, harass, directly or indirectly,
7 or in any other manner discriminate against, a
8 whistleblower in the terms and conditions of
9 employment because of any lawful act done by
10 the whistleblower—

11 “(i) in providing information to the
12 Board in accordance with this subsection;

13 “(ii) in initiating, testifying in, or as-
14 sisting in any investigation or judicial or
15 administrative action of the Board based
16 upon or related to such information;

17 “(iii) in making disclosures that are
18 required or protected under the Sarbanes-
19 Oxley Act of 2002 (15 U.S.C. 7201 et
20 seq.), the Securities Exchange Act of 1934
21 (15 U.S.C. 78a et seq.), including section
22 10A(m) of such Act (15 U.S.C. 78f(m)),
23 section 1513(e) of title 18, United States
24 Code, and any other law, rule, or regula-

tion subject to the jurisdiction of the Securities and Exchange Commission; or

“(iv) in providing information regarding any conduct that the whistleblower reasonably believes constitutes a potential violation of any law, rule, or regulation subject to the jurisdiction of the Board or the Commission (including disclosures that are required or protected under the Sarbanes-Oxley Act of 2002 or the Securities Exchange Act of 1934) to—

“(I) a person with supervisory authority over the whistleblower at the whistleblower’s employer, where such employer is an entity registered with or required to be registered with the Board, the Commission, a self-regulatory organization, or a State securities commission or office performing like functions; or

“(II) such other person working for the employer described under subclause (I) who has the authority to investigate, discover, or terminate misconduct.

1 “(B) ENFORCEMENT OF PROHIBITION
2 AGAINST RETALIATION.—

3 “(i) CAUSE OF ACTION.—An indi-
4 vidual who alleges discharge or other dis-
5 crimination in violation of subparagraph
6 (A) may bring an action under this para-
7 graph in the appropriate district court of
8 the United States for the relief provided in
9 subparagraph (C).

10 “(ii) SUBPOENAS.—A subpoena re-
11 quiring the attendance of a witness at a
12 trial or hearing conducted under this sub-
13 section may be served at any place in the
14 United States.

15 “(iii) STATUTE OF LIMITATIONS.—

16 “(I) IN GENERAL.—An action
17 under this paragraph may not be
18 brought—

19 “(aa) more than 6 years
20 after the date on which the viola-
21 tion of subparagraph (A) oc-
22 curred; or

23 “(bb) more than 3 years
24 after the date when facts mate-
25 rial to the right of action are

1 known or reasonably should have
2 been known by the employee al-
3 leging a violation of subpara-
4 graph (A).

5 “(II) REQUIRED ACTION WITHIN
6 10 YEARS.—Notwithstanding sub-
7 clause (I), an action under this para-
8 graph may not in any circumstance be
9 brought more than 10 years after the
10 date on which the violation occurs.

11 “(C) RELIEF.—Relief for an individual
12 prevailing in an action brought under this para-
13 graph shall include—

14 “(i) reinstatement with the same se-
15 niority status that the individual would
16 have had, but for the discrimination;

17 “(ii) two times the amount of back
18 pay otherwise owed to the individual, with
19 interest; and

20 “(iii) compensation for litigation
21 costs, expert witness fees, and reasonable
22 attorneys’ fees.

23 “(D) CONFIDENTIALITY.—

24 “(i) IN GENERAL.—Except as pro-
25 vided in clause (ii), the Board and any of-

1 ficer or employee of the Board may not
2 disclose any information, including infor-
3 mation provided by a whistleblower to the
4 Board, which could reasonably be expected
5 to reveal the identity of a whistleblower
6 unless and until required to be disclosed to
7 a defendant or respondent in connection
8 with a public proceeding instituted by the
9 Commission or any entity described in
10 clause (iii).

11 “(ii) RULE OF CONSTRUCTION.—
12 Nothing in this section is intended to limit,
13 or shall be construed to limit, the ability of
14 the Attorney General to present such evi-
15 dence to a grand jury or to share such evi-
16 dence with potential witnesses or defend-
17 ants in the course of an ongoing criminal
18 investigation.

19 “(iii) AVAILABILITY TO GOVERNMENT
20 AGENCIES.—

21 “(I) IN GENERAL.—Without the
22 loss of its status as confidential in the
23 hands of the Board, all information
24 referred to in clause (i) may, in the
25 discretion of the Board, when deter-

1 mined by the Board to be necessary to
2 accomplish the purposes of this Act
3 and to protect investors, be made
4 available to—

5 “(aa) the Attorney General
6 of the United States;

7 “(bb) an appropriate regu-
8 latory authority;

9 “(cc) a self-regulatory orga-
10 nization;

11 “(dd) a State attorney gen-
12 eral in connection with any crimi-
13 nal investigation;

14 “(ee) any appropriate State
15 regulatory authority;

16 “(ff) the Commission;

17 “(gg) a foreign securities
18 authority; and

19 “(hh) a foreign law enforce-
20 ment authority.

21 “(II) CONFIDENTIALITY.—

22 “(aa) IN GENERAL.—Each
23 of the entities described in items
24 (aa) through (ff) of subclause (I)
25 shall maintain such information

1 as confidential in accordance with
2 the requirements established
3 under clause (i).

4 “(bb) FOREIGN AUTHORITIES.—Each of the entities de-
5 scribed in subclauses (gg) and
6 (hh) of subclause (I) shall main-
7 tain such information in accord-
8 ance with such assurances of con-
9 fidentiality as the Board deter-
10 mines appropriate.
11

12 “(E) RIGHTS RETAINED.—Nothing in this
13 subsection shall be deemed to diminish the
14 rights, privileges, or remedies of any whistle-
15 blower under any Federal or State law, or
16 under any collective bargaining agreement.

17 “(8) PROVISION OF FALSE INFORMATION.—A
18 whistleblower shall not be entitled to an award under
19 this section if the whistleblower—

20 “(A) knowingly and willfully makes any
21 false, fictitious, or fraudulent statement or rep-
22 resentation; or

23 “(B) uses any false writing or document
24 knowing the writing or document contains any

1 false, fictitious, or fraudulent statement or
2 entry.

3 “(9) RULEMAKING AUTHORITY.—The Board
4 shall have the authority to issue such rules and
5 standards as may be necessary or appropriate to im-
6 plement the provisions of this section consistent with
7 the purposes of this section.

8 “(10) COORDINATION.—To the maximum ex-
9 tent practicable, the Board shall coordinate with the
10 Office of the Whistleblower of the Securities and Ex-
11 change Commission in carrying out this sub-
12 section.”; and

13 (2) in section 109(c)(2) (15 U.S.C. 7219(c)(2)),
14 by striking “all funds collected” and inserting “at
15 least 50 percent of funds collected”.

16 **SEC. 3. DETERMINATION OF BUDGETARY EFFECTS.**

17 The budgetary effects of this Act, for the purpose of
18 complying with the Statutory Pay-As-You-Go Act of 2010,
19 shall be determined by reference to the latest statement
20 titled “Budgetary Effects of PAYGO Legislation” for this
21 Act, submitted for printing in the Congressional Record
22 by the Chairman of the House Budget Committee, pro-
23 vided that such statement has been submitted prior to the
24 vote on passage.

